

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAUREEN A. VOGT and U.S. POSTAL SERVICE,
POST OFFICE, Key West, FL

*Docket No. 99-1116; Submitted on the Record;
Issued August 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On September 12, 1994 appellant, then a 54-year-old postmaster, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that her depression was due to work pressures from her federal employment. Appellant stopped work on September 9, 1994 and was terminated by the employing establishment effective February 17, 1995.

By decision dated December 15, 1994, the Office denied appellant's claim for compensation on the basis that the evidence of record was insufficient to establish that appellant's illness constituted an injury arising out of and in the performance of duty.

In a letter dated December 14, 1995, appellant's counsel requested reconsideration of the December 15, 1994 decision. In support of her request she submitted a position description for supervisor and postmaster positions, various letters from appellant and postal officials, a December 12, 1995 report, by Dr. Steven Lawyer,¹ a statement from appellant, copies of memorandum from appellant regarding hiring new employees and an employing establishment's vacancy announcement for the position of postmaster.

Subsequently, the Office received additional evidence which included various letters from appellant and the employing establishment, a February 3, 1995 letter to appellant from the employing establishment terminating her employment and a preliminary investigative memorandum with accompanying exhibits.

¹ Appellant's attending physician.

By decision dated June 17, 1996, the Office denied appellant's request for reconsideration of the Office's December 15, 1994 decision, after merit review, as the Office found that the evidence submitted was insufficient to warrant modification of the prior decision denying appellant's claim for benefits.

In a letter dated June 16, 1997, appellant's counsel requested reconsideration of the June 17, 1996 decision. In support of her request, appellant submitted a copy of her application for disability retirement, December 21, 1993 staff meeting notes, the notice of proposed removal, Dr. Lawyer's report, letters from the employing establishment and appellant, and a list of duties for the postmaster position.

In a merit decision dated September 12, 1997, the Office denied appellant's request for reconsideration of the June 17, 1996 decision, as the Office found that the evidence submitted was insufficient to warrant modification of the prior decision denying appellant's claim for benefits.

By letter dated September 12, 1998, appellant's counsel requested reconsideration and argued that appellant had established compensable work factors including lack of proper training for her position and that appellant worked long hours.

By nonmerit letter decision dated November 24, 1998, the Office denied appellant's reconsideration request as she failed to raise any substantive legal question or include new and relevant evidence.

The Board's jurisdiction to consider and decide appeals from the final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.² As appellant filed her appeal with the Board on February 19, 1999 the only decision before the Board is the nonmerit November 24, 1998 Office decision, which denied appellant's request for a review of the merits of the case. There is no other Office decision issued within one year of the date appellant filed her appeal, February 19, 1999, over which the Board has jurisdiction.³

The Board finds that refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), does not constitute an abuse of discretion.

Section 8128(a) does not require the Office to review final decisions of the Office awarding or denying compensation. This section vests the Office with the discretionary authority to determine whether it will review a claim following the issuance of a final decision by the Office.⁴ Although it is a matter of discretion on the part of the Office of whether to

² *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ 20 C.F.R. §§ 501.2(c), 501.3(d).

⁴ *Gregory Griffin*, 41 ECAB 186 (1989).

reopen a case for further consideration under 5 U.S.C. § 8128(a),⁵ the Office, through regulations, has placed limitations on the exercise of that discretion with respect to a claimant's request for reconsideration. By these regulations, the Office has stated that it will reopen a claimant's case and review the case on its merits whenever the claimant's application for review meets the specific requirements set forth in sections 10.138(b)(1) and 10.138(b)(2) of Title 20 of the Code of Federal Regulations.

To require the Office to reopen a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law; or

“(ii) Advancing a point of law or fact not previously considered by the Office; or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”⁶

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.⁷

Evidence which does not address the particular issue involved,⁸ or evidence which is repetitive or cumulative of that already in the record,⁹ does not constitute a basis for reopening a case.

In the present case, in support of her September 12, 1998 reconsideration request appellant raised no new legal questions nor submitted relevant and pertinent evidence not previously considered and, therefore, she presented no basis for reopening her case for a further review of the merits and the application for review was properly denied in accordance with 20 C.F.R. § 10.138(b)(2). Instead, the reconsideration request essentially repeated contentions previously considered by the Office. As noted above, evidence that is repetitive or cumulative does not constitute a basis for reopening a case.

⁵ See *Charles E. White*, 24 ECAB 85 (1972).

⁶ 20 C.F.R. § 10.138(b)(1).

⁷ 20 C.F.R. § 10.138(b)(2).

⁸ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁹ *Eugene F. Butler*, 36 ECAB 393 (1984).

The decision of the Office of Workers' Compensation Programs dated November 24, 1998 is hereby affirmed.

Dated, Washington, D.C.
August 10, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member